

Executive Summary – Enforcement Matter – Case No. 48809
NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
RN102378577
Docket No. 2014-0812-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Pantry Food & Gas, 541 Farm-to-Market Road 1489, Brookshire, Waller County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Interested Third-Parties: None

Texas Register Publication Date: November 7, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,230

Amount Deferred for Expedited Settlement: \$2,646

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$294

Total Due to General Revenue: \$10,290

Payment Plan: 35 payments of \$294 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 8, 2014

Date(s) of NOE(s): May 30, 2014

Executive Summary – Enforcement Matter – Case No. 48809
NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
RN102378577
Docket No. 2014-0812-PST-E

Violation Information

1. Failed to provide proper corrosion protection for the underground storage tank ("UST") system [30 TEX. ADMIN. CODE §§ 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
2. Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
3. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris. Specifically, the spill buckets contained liquid and debris [30 TEX. ADMIN. CODE § 334.42(i)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. Successfully conducted a cathodic protection system triennial test on June 16, 2014; and
- b. Labeled the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form on June 16, 2014.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, begin conducting bimonthly inspections of all sumps, manways, overspill containers or catchment basins associated with the UST system once every 60 days.
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Executive Summary – Enforcement Matter – Case No. 48809
NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
RN102378577
Docket No. 2014-0812-PST-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: James Baldwin, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-1337; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Mohammad Zahid, President, NEW MZ ENTERPRISES INC., 4103
North New Meadows Drive, Sugar Land, Texas 77479

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	2-Jun-2014	Screening	9-Jun-2014	EPA Due	
	PCW	19-Sep-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	NEW MZ ENTERPRISES INC. dba Pantry Food & Gas		
Reg. Ent. Ref. No.	RN102378577		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	48809	No. of Violations	3
Docket No.	2014-0812-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Baldwin
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	-5.0% Reduction	Subtotals 2, 3, & 7	-\$750
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Notes: Enhancement for one NOV with same/similar violations and reduction for high performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,125
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$143
Estimated Cost of Compliance \$5,200

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,125
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.8%	Adjustment	\$105
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount	\$13,230
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,230
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,646
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$10,584
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Screening Date 9-Jun-2014

Docket No. 2014-0812-PST-E

PCW

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas

Policy Revision 4 (April 2014)

Case ID No. 48809

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378577

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one NOV with same/similar violations and reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -5%

Screening Date 9-Jun-2014

Docket No. 2014-0812-PST-E

PCW

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas

Policy Revision 4 (April 2014)

Case ID No. 48809

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378577

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 334.49(a)(1) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide proper corrosion protection for the underground storage tank ("UST") system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

32 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

One quarterly event is recommended from the May 8, 2014 investigation date to the June 9, 2014 screening date.

Good Faith Efforts to Comply

10.0%

Reduction \$750

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes

The Respondent came into compliance on June 16, 2014 after the Notice of Enforcement ("NOE") dated May 30, 2014.

Violation Subtotal \$6,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$37

Violation Final Penalty Total \$6,426

This violation Final Assessed Penalty (adjusted for limits) \$6,426

Economic Benefit Worksheet

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
Case ID No. 48809
Reg. Ent. Reference No. RN102378577
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$5,000	8-May-2014	16-Jun-2014	0.11	\$2	\$36	\$37
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to provide proper corrosion protection including repairs for the UST system. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$37

Screening Date 9-Jun-2014

Docket No. 2014-0812-PST-E

PCW

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas

Policy Revision 4 (April 2014)

Case ID No. 48809

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378577

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description

Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix
Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended based on documentation of the violation during the May 8, 2014 investigation.

Good Faith Efforts to Comply

10.0%

Reduction \$375

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent came into compliance on June 16, 2014 after the Notice of Enforcement ("NOE") dated May 30, 2014.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$3,213

This violation Final Assessed Penalty (adjusted for limits) \$3,213

Economic Benefit Worksheet

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
Case ID No. 48809
Reg. Ent. Reference No. RN102378577
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	8-May-2014	16-Jun-2014	0.11	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the investigation date and the final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$1

Screening Date 9-Jun-2014

Docket No. 2014-0812-PST-E

PCW

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas

Policy Revision 4 (April 2014)

Case ID No. 48809

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102378577

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris. Specifically, the spill buckets contained liquid and debris.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

32 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the May 8, 2014 investigation to the June 9, 2014 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$3,591

This violation Final Assessed Penalty (adjusted for limits) \$3,591

Economic Benefit Worksheet

Respondent NEW MZ ENTERPRISES INC. dba Pantry Food & Gas
 Case ID No. 48809
 Reg. Ent. Reference No. RN102378577
 Media Petroleum Storage Tank
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	9-Mar-2014	8-May-2014	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The date required is 60 days before the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$100

TOTAL

\$105

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN603564956, RN102378577, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603564956, NEW MZ ENTERPRISES INC. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102378577, Pantry Food & Gas **Classification:** HIGH **Rating:** 0.00

Complexity Points: 5 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 541 Farm-to-Market Road 1489, Brookshire, Waller County, Texas

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 33298

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: June 09, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 09, 2009 to June 09, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: James Baldwin

Phone: (512) 239-1337

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a

regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1 Date: 10/22/2013 (1102727) CN603564956
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)
Description: 30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C)
30 Tex. Admin. Code Section 334.49(c)(4)(C) - Failure to have cathodic protection system tested by a qualified corrosion specialist or corrosion technician in accordance within three to six months after installation and at a subsequent frequency of at least once every three years.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
Description: 30 Tex. Admin. Code Section 334.49(c)(2)(C) - Failure to check rectifier once every 60 days for impressed current systems.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(C)
Description: 30 Tex. Admin. Code Section 334.8(c)(5)(C) - Failure of the owner or operator of the USTs regulated under this section for ensuring within 30 days of the effective date of this section, or within 30 days of a subsequent tank installation, that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.51(b)(2)(C)
Description: 30 Tex. Admin. Code Section 334.51(b)(2)(C) - Failure to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 334, SubChapter C 334.42(i)
Description: 30 Tex. Admin. Code Section 334.42(I) - Failure to inspect at least once every 60 days any overspill containers or catchment basins installed at any time, which are associated to the UST system to ensure their sides, bottoms, and any penetration points are maintained liquid tight.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: 30 TAC 115.246 (5) - Failure to maintain a record of results of testing conducted at the facility according to 115.245 (Testing Requirements).

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
NEW MZ ENTERPRISES INC.
DBA PANTRY FOOD & GAS
RN102378577**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2014-0812-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding NEW MZ ENTERPRISES INC. dba Pantry Food & Gas ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 541 Farm-to-Market Road 1489 in Brookshire, Waller County, Texas (the "Facility").
2. The Respondent's five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 4, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirteen Thousand Two Hundred Thirty Dollars (\$13,230) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Ninety-Four

Dollars (\$294) of the administrative penalty and Two Thousand Six Hundred Forty-Six Dollars (\$2,646) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Ten Thousand Two Hundred Ninety Dollars (\$10,290) of the administrative penalty shall be payable in 35 monthly installments of Two Hundred Ninety-Four Dollars (\$294) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable upon without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Successfully conducted a cathodic protection system triennial test on June 16, 2014; and
 - b. Labeled the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form on June 16, 2014.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide proper corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE §§ 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on May 8, 2014.
2. Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on May 8, 2014.
3. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on May 8, 2014. Specifically, the spill buckets contained liquid and debris.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: NEW MZ ENTERPRISES INC. dba Pantry Food & Gas, Docket No. 2014-0812-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, begin conducting bimonthly inspections of all sumps, manways, overspill containers or catchment

basins associated with the UST system once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.42.

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not

effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

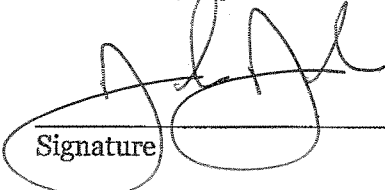
2/18/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature
Mohammad ZAHID

9/24/14
Date

Name (Printed or typed)
Authorized Representative of
NEW MZ ENTERPRISES INC. dba Pantry Food & Gas

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.